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No. 94-1853

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

PAUL DAVID FINI CASTRIOTTA, *Petitioner,*

v.

THE STATE OF NEVADA, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

RESPONDENT'S BRIEF IN OPPOSITION

STEWART L. BELL
Clark County District Attorney

JAMES N. TUFTELAND*
Chief Deputy District Attorney
Clark County Courthouse
200 South Third Street, Suite 701
Las Vegas, Nevada 89155
(702) 455-4711
Counsel for Respondent

*Counsel of Record

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QUESTION PRESENTED

1. Does the Full Faith and Credit Clause of the United States Constitution require that a sister state give res judicata effect to prior extradition proceedings?

2. Did the Nevada district court properly apply this Court's holding in *Michigan v. Doran*, 439 U.S. 282 (1978)?

3. Was the Supreme Court of the State of Nevada required to determine whether the Petitioner was tried in absentia?

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, the State of Nevada, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Nevada Supreme Court opinion in this case. That opinion is reported at 888 P.2d 927 (Nev. 1995).

STATEMENT

On October 10, 1992, the Petitioner, Paul David Fini Castriotta, was arrested in Florida as a fugitive from justice

based upon outstanding warrants from Arizona. Arizona demanded that the Petitioner be extradited back to that state. The Petitioner then filed a petition for a writ of habeas corpus arguing that Arizona's requisitioning documents were not in order and that he was not a fugitive from justice. The Florida court agreed and the Petitioner was released.

Based upon the same Arizona warrants, the Petitioner was subsequently arrested in Las Vegas, Nevada, on June 16, 1994. Arizona, again, demanded that the Petitioner be extradited back to that state and he, again, filed a petition for a writ of habeas corpus. However, the Nevada district court denied the petition.

The Petitioner then appealed this ruling to the Supreme Court of the State of Nevada, arguing that (1) the principle of res judicata required the Nevada court to give conclusive effect to the Florida court's finding that the Petitioner was not a fugitive from justice; (2) Nevada and Arizona acted in bad faith; and (3) the Petitioner was convicted in Arizona in absentia.

As to these issues, the Nevada Supreme Court concluded that extradition proceedings do not carry res judicata effect.

Castriotta v. State, 888 P.2d 927, 928 (Nev. 1995). It was also concluded that Nevada and Arizona did not act in bad faith and that the Nevada district court properly applied this Court's holding in *Michigan v. Doran*, 439 U.S. 282 (1978). *Id.* at 928-29. Specifically, the Nevada Supreme Court determined that the Nevada district court properly declined consideration of evidence showing that the Petitioner was not in Arizona when the crimes charged were committed. *Id.* at 928 n.1. Finally, the Nevada Supreme Court refused to reach the issue of whether the Petitioner was tried in absentia, concluding that that issue was best raised before the courts of Arizona. *Id.* at 929.

REASONS WHY THE PETITION SHOULD BE DENIED

The Petitioner presents six constitutional issues he claims were raised by way of the decision of the Supreme Court of the State of Nevada. (Pet. at ii-iv.) In fact, only three of the cited issues raised by that court's opinion are properly presented by the Petitioner. Moreover, the decision of the Nevada Supreme Court was sound, leaving no constitutional infirmities for this

Honorable Court to cure.

I

ONLY THREE OF THE SIX QUESTIONS PRESENTED ARE PROPERLY RAISED BY THE PETITIONER

The Petitioner states as his first question presented whether a sister state must give full faith and credit to a final judgment in a habeas corpus action in which it was decided that the Petitioner was not a fugitive from justice. (Pet. at ii.) The second question presented is whether the Nevada Supreme Court erred in refusing to give res judicata effect to the prior Florida court ruling in which it was determined that the Petitioner was not a fugitive from justice. (Pet. at ii.) Since the doctrine of res judicata is predicated upon the Full Faith and Credit Clause, *see Durfee v. Duke*, 375 U.S. 106, 109 (1968) ("Full faith and credit . . . generally requires every State to give a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it."), the Petitioner has essentially stated the same issue in two different ways. As such, the State will

address in this Brief in Opposition the single issue of whether the Full Faith and Credit Clause of the United States Constitution requires that a sister state give res judicata effect to prior extradition proceedings.

As his third issue, the Petitioner asks whether a demanding state is barred from issuing additional requisition applications by virtue of the doctrine of res judicata once a court determines that the detainee is not a fugitive from justice. (Pet. at ii-iii.) His fourth issue is whether the Petitioner's right to interstate travel was violated by information placed in the National Crime Information Center computer. (Pet. at iii.) The Nevada court decided that the Petitioner's "other arguments as to the bad faith of Nevada and Arizona have been considered and are without merit." *Castriotta*, 888 P.2d at 929. Because of this cursory determination, these issues were not sufficiently ruled upon in the opinion of the Nevada Supreme Court to warrant discussion here. *Cf. New York v. Uplinger*, 467 U.S. 246, 248-49 (1984) (dismissing improvidently granted writ of certiorari, in part, because the opinion of the lower court was "fairly

subject to varying interpretations, leaving us uncertain as to the precise federal constitutional issue the court decided." (footnote omitted)). Consequently, this Court cannot now consider these issues.

As his fifth question presented, the Petitioner states the valid issue of whether the Nevada district court properly applied this Court's holding in *Michigan v. Doran*, 439 U.S. 282 (1978). (Pet. at iii.)

Finally, the Petitioner asks this Court to find error with the Supreme Court of the State of Nevada in declining to determine whether he was tried in absentia. (Pet. at iii-iv.)

II

THE FULL FAITH AND CREDIT CLAUSE DOES NOT REQUIRE THAT EXTRADITION PROCEEDINGS BE GIVEN RES JUDICATA EFFECT

In its opinion, the Nevada Supreme Court held that extradition proceedings are not entitled to res judicata effect. *Castriotta*, 888 P.2d at 928. The issue of whether extradition proceedings carry res judicata effect was addressed by this Court

many years ago. In *Collins v. Loisel*, 262 U.S. 426, 427 (1923), the petitioner tried to prevent his extradition to British India through habeas petitions. He was charged with three counts of obtaining property by false pretenses as to three different victims. *See id.* Relief was denied as to one court, but the district court discharged the petitioner as to the other two counts since the prosecution on those counts had been abandoned and new charges had been filed. *Id.* at 427-28.

While the petitioner was being held for the charge in count one, affidavits with regard to the other two counts were again filed and the petitioner was again held to await extradition. *Id.* at 428. However, a warrant of extradition was not issued since the proceedings as to the first count were still in progress. *Id.* Finally, a third set of affidavits for the other two charges were filed against the petitioner. *Id.* These affidavits were in form and substance identical to those which had been previously dismissed. *Id.* After an unsuccessful motion to quash these charges and a failed bid at habeas corpus relief, the petitioner appealed to this Court.

The petitioner argued that since the original order of extradition had been discharged on habeas corpus, the new set of affidavits recharging the two other counts were barred by the doctrine of res judicata. *Id.* This Court concluded, however, that a "fugitive from justice may be arrested in extradition proceedings a second time upon a new complaint charging the same crime, where he was discharged by the magistrate on the first complaint or the complaint was withdrawn." *Id.* at 429 (footnote omitted). It also held that "[t]he discharge of [the petitioner] on the first petition . . . does not operate as res judicata. *Id.* at 430. The Court continued, "the judgment is res judicata only that [the petitioner] was *at the time* illegally in custody, and of the issues of law and fact necessarily involved in that result." *Id.* (emphasis added) (footnote omitted). Finally, the Court elaborated on its reasoning:

> The discharge here in question did not go to the right to have [the petitioner] held for extradition. It was granted because the proceedings on which he was then held had been irregular and the British consul general, instead of undertaking to correct them, had concluded to abandon them, and to file anew by another set of affidavits.

Id.

More than fifty years later, in *Hooker v. Klein*, 573 F.2d 1360 (9th Cir. 1978). *cert. denied*, 439 U.S. 932 (1978), the Ninth Circuit considered the analysis in *Collins*. Focusing on the passage just quoted, that court found that the "seeming limitation on the Court's holding leaves unsettled the question of whether an original denial of extradition *on the merits* should have any effect on subsequent extradition proceedings on the same charges." *Id.* at 1366 (emphasis added) (footnote omitted). The court then undertook an extensive analysis of the applicability of the doctrine of res judicata in extradition proceedings.

The Ninth Circuit first set forth the necessary elements for the application of res judicata: (1) a valid, final judgment; (2) on the merits; (3) a subsequent proceeding involving the same parties or those in privity with them; and (4) based upon the same cause of action or claim. *Id.* at 1367.

Then, the court determined that extradition proceedings defy easy classification in that "[t]he function of an extraditing court is not to decide the guilt or innocence of the fugitive at

law, but rather to determine whether there is 'competent legal evidence which . . . would justify his apprehension and commitment for trial if the crime had been committed in [the forum] state.'" *Id.* (quoting *Collins v. Loisel*, 259 U.S. 309, 315 (1922) (modification in *Hooker*). The court also reasoned that the finding of extradition marks the start, not the conclusion, of the determination of the fugitive's guilt or innocence. *Id.* The determination of extradition is an interlocutory order similar to a preliminary hearing on criminal charges. *Id.* Since the extraditing court does not rule on the guilt or innocence of the fugitive, it could not be said that an order of extradition constitutes a final judgment for res judicata purposes. *Id.* at 1367-68.

Nor is an extradition proceeding decided "on the merits." The merits of a fugitive's guilt or innocence are not explored. *Id.* at 1368. The extraditing court is only to consider whether there is sufficient evidence to justify the extradition of the fugitive. *Id.* There are, likewise, limitations as to the evidence allowed. *See id.* (citing *Charlton v. Kelly*, 229 U.S. 447, 456

(1913)). As such, an order of extradition does not entail a consideration of all the merits of the case. *Id.*

The Ninth Circuit, building on *Collins*, concluded that "it is wholly inappropriate to apply res judicata concepts to the findings resulting from extradition proceedings." *Id.* This was precisely the holding of the Supreme Court of the State of Nevada. *Cf. Castriotta*, 888 P.2d at 928 (citing *Stone v. State*, 450 P.2d 136 (Nev. 1969); *In re Russell*, 524 P.2d 1295 (Cal. 1974)) ("We conclude that an extradition proceeding is not res judicata as to subsequent proceedings."). Indeed, no error can be found with this conclusion.

III

THE NEVADA DISTRICT COURT PROPERLY APPLIED THIS COURT'S HOLDING IN *MICHIGAN V. DORAN*

In *Michigan v. Doran*, 439 U.S. 282, 289 (1979), this Court limited permissible inquiry in habeas corpus proceedings when challenging extradition to four issues: (1) whether the extradition documents are in order; (2) whether the petitioner is

charged with a crime in the demanding state; (3) whether the person named in the extradition documents is in fact the petitioner; and (4) whether the petitioner is a fugitive.

The Petitioner argues that the courts of Nevada did not allow him to prove that he was not a fugitive. Specifically, he argues that the Nevada district court would not consider evidence showing that he was absent from Arizona when the crimes with which he was charged were committed. (Pet. at 8-9, 48.) The Nevada Supreme Court concluded that this evidence was properly raised before the courts of Arizona. *Castriotta*, 888 P.2d at 928. It was also concluded that the Nevada district court heard ample evidence showing that the Petitioner was a fugitive from justice. *Id.* at 928-29.

To be regarded as a fugitive from justice, it must be shown that a person committed an act in a state which, under its laws, is a crime, and then departed from its jurisdiction and, when sought to be prosecuted, was found in another state. *Hogan v. O'Neill*, 255 U.S. 52, 56 (1921) (citing *Biddinger v. Commissioner of Police*, 245 U.S. 128, 133 (1917); *McNichols*

v. Pease, 207 U.S. 100, 108 (1907); *Appleyard v. Massachusetts*, 203 U.S. 222, 228 (1906); *Munsey v. Clough*, 196 U.S. 364, 372-75 (1905); *Roberts v. Reiley*, 116 U.S. 80, 95-97 (1885)). The evidence the Petitioner sought to have admitted was irrelevant as to this inquiry.

In putting forth evidence tending to show that he was not in Arizona when the crimes were committed, the Petitioner sought to demonstrate his ultimate innocence. As this Court has made clear, "extradition proceedings are 'to be kept within narrow bounds'; they are 'emphatically' not the appropriate time or place for entertaining defenses or determining the guilt or innocence of the charged party." *California v. Superior Court*, 482 U.S. 400, 407-08 (1987) (quoting *Biddinger*, 245 U.S. at 135) (additional citations omitted). The Court continued: "Those inquiries are left to the prosecutorial authorities and courts of the demanding State . . . ." *Id.* at 408 (citations omitted). Consequently, no error can be found in the opinion of the Nevada Supreme Court.

IV

THE NEVADA SUPREME COURT WAS NOT REQUIRED TO DETERMINE WHETHER THE PETITIONER WAS TRIED IN ABSENTIA

In its opinion, the Nevada court concluded "that the contention that [the Petitioner] has already been convicted in absentia should more properly be raised before the courts of Arizona." *Castriotta*, 888 P.2d at 929 (citation omitted). The gravamen of the Petitioner's argument is that this Court's overruling of *Ahrens v. Clark*, 335 U.S. 188 (1948), in *Braden v. Circuit Court*, 410 U.S. 484 (1973), invalidates such action. (Pet. at 55-57.) However, there is no basis for this conclusion.

In this case, the decision of the Supreme Court of the State of Nevada was premised upon three prior Nevada precedents: *Martinez v. Sheriff*, 527 P.2d 1200, 1200-01 (Nev. 1974) (an asylum state cannot inquire into the efficacy of the indictment in the demanding state); *Sheriff v. Randono*, 515 P.2d 1267, 1268 (Nev. 1973), *cert. denied*, 416 U.S. 956 (1974) (a trial judge is not required to anticipate a potential constitutional

violation resulting from extradition of a fugitive to a demanding state); and *Lucas v. Sheriff*, 466 P.2d 659, 660 (Nev. 1970) (the question of whether returning a fugitive to the demanding state would result in a trial violative of his right against double jeopardy was best decided by the courts of the demanding state). This line of reasoning is not even remotely that used by this Court in overruling *Ahrens*.

Ahrens held that habeas corpus petitions could be brought only in the district of the petitioner's confinement. *Ahrens*, 335 U.S. at 191-93. It is true that *Ahrens* was subsequently overruled. *See Braden v. Circuit Court*, 410 U.S. at 500-01 (". . . we can no longer view [*Ahrens*] as establishing an inflexible jurisdictional rule, dictating the choice of an inconvenient forum even in a class of cases which could not have been foreseen at the time of our decision."). However, this reasoning has no place in the discussion of the present case. The petition giving rise to this action was brought in Nevada, the place of the Petitioner's confinement, making *Ahrens* and *Braden* wholly irrelevant. In addition, the Nevada court did not

determine that it was without jurisdiction to hear the petition. The present action is evidence of that fact. The Nevada court rather determined that the courts of Arizona provided a more suitable venue to pursue the trial-in-absentia claim. As such, no error can be assigned to the decision of the Supreme Court of the State of Nevada.

The Petitioner asks that his petition be granted "if for no other reason" (Pet. at 55) than to remedy his alleged trial in absentia. On the contrary, this Court has long ago held that a writ of certiorari will not issue upon a claim for which an adequate remedy otherwise exists. *In re Tampa Suburban R.R.*, 168 U.S. 583, 588 (1897). In this case, the Petitioner is surely able to pursue this alleged constitutional infirmity in the courts of Arizona. It would also appear, consistent with this Court's holding in *Michigan v. Doran*, 439 U.S. at 289, limiting those issues properly considered by an extraditing state, that this issue *must* be pursued in Arizona.

Finally, consistent with Sup. Ct. R. 15.1 in addressing misstatements of fact, the Respondent notes that the Petitioner

was charged with several additional crimes in Arizona though he does not make reference to these charges in his petition. The Petitioner was charged with fraudulent scheme and artifice in Case No. CR-18937. He failed to appear and was then further charged with theft of a credit card, theft by control and burglary in the second degree. He is also charged with fraudulent scheme and artifice and theft of a credit card in Case No. CR-19973. Though the record is unclear, it seems certain that the Petitioner was not tried in absentia for all of the charges associated with Case No. CR-18937 and never tried in Case No. CR-19973. Assuming, *arguendo*, that the Petitioner was tried in absentia as to some of the charges against him, this potential infirmity does not exist with regard to the host of other charges pending against him.

CONCLUSION

Indeed, the Nevada Supreme Court unquestionably applied the correct rules of law and did not unquestionably err. This is, precisely, the type of case in which this Court is *most*

inclined to deny certiorari. *See Kyles v. Whitley*, — U.S. —, 115 S. Ct. 1555, 1578 (1995) (Scalia, J., dissenting) (emphasis in original). For these reasons, the Petition for Writ of Certiorari should be denied.

Dated June 7, 1995.

Respectfully submitted,

STEWART L. BELL
Clark County District Attorney

JAMES N. TUFTELAND*
Chief Deputy District Attorney
CHRISTOPHER J. LALLI
Deputy District Attorney
Clark County Courthouse
200 South Third Street, Suite 701
Las Vegas, Nevada 89155
(702) 455-4711
Counsel for Respondent

*Counsel of Record